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Reply Brf. of Atty. Gen. (Hoyt)
for Respondent.

Filed Nov. 10, 1902.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

ROBERT E. DOWNS, PETITIONER,
v.
THE UNITED STATES.
} No. 318.

REPLY BRIEF FOR THE UNITED STATES.

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It is worth while to answer a few of the statements in the petitioner's supplemental brief. It does not make the slightest difference that the Moscow manufacturer can not afford to pay more than he does to the exporting manufacturer; he pays enough to approximate the home price to the exporter—that is, a large percentage of that price. And so, through the Government scheme, the home-market man puts a bounty into the hands of the man who comes into our markets.

The Government brief did inadvertently imply that the small indivertible reserve, like the free reserve, could be put on the home market by the payment of the double excise. That immaterial error in stating the facts does not affect the argument in the slightest degree.

The Government admission of hasty reading of the *procès verbal* of course completely grants that it is unlikely that Russian delegates at the conference of 1898

were among those unnamed delegates who characterized exportation under the Russian scheme as compulsory.

As to the alternative of carrying surplus reserve over to the next campaign, it seems that a considerable amount was carried over in 1900, but that is not the point. Inactivity in the home-market demand for transfers, or exceptionally low foreign prices, may have produced this result. It is, however, simply inconceivable from the importer's own citations of the law and regulations that when upon an aggregate production of a following campaign, which includes surplus carried over, "the ministry of finance determines what percentage ratio the surplus shall bear to the output," the meaning is that free reserve becomes free sugar—except, indeed, at the cost of decreasing that campaign's production just so much. Otherwise there would be no force in the Government's limitation of production, for the doubly taxed reserve of one year would always appear on the market the next year as single excise free sugar in addition to that year's new production. The Government estimates embrace last season's surplus, but they give reserve no right of entry at home except on the general scheme of maximum production and ratio of free sugar and reserves. This constitutes no inducement to carry over as against the premium on export.

The Government cited, and not trivially, an Associated Press dispatch in a responsible journal. State Department advices have brought in since the argu-

ment copies of the Russian journal of Kiev referred to, the *Kievlanin*, containing the article quoted in the cable correspondence. Translation at the American consulate at St. Petersburg shows that the article discusses the published note of the minister of finance issued to the governments which signed the Brussels Sugar Convention, in which the minister insists that Russia pays no export premium on sugar exported; but declares that if it should be found that the Russian system disturbs international trading interests Russia would willingly participate, under certain conditions, in a discussion upon such measures as might be taken in order to prevent artificial means of influencing international markets. Commenting on this, the article says:

> The sugar note of our minister of finance gives a supplementary historical view of the norming system, tending to explain that this measure had exclusively the regulation of the home trade for object. As aforesaid, it is difficult to accept this explanation. The operation is in fact, call it as you like, the secret payment of export premiums, and has the same effect as would have a direct premium.
>
> Finally, we must mention that it is very difficult to understand the sense of this fruitless discussion with the governments which have adopted the decisions of the conference on sugar. It being impossible to convince anybody that our norming system is not equivalent to secret export premiums (the fact being too evident), the statement of a need of this

> measure for the regulation of the home market can have no value at all in the opinion of governments wanting to protect their markets from the access of foreign premium-paid sugar, because they see only the result of the measure, but not the intention which moved the promoter. The result is, of course, that, anyhow, our sugar enjoys a secret export premium. (Dispatch to Secretary of State from W. R. Halloway, consul-general at St. Petersburg, Russia, dated October 15, 1902.)

This reveals, at least, strong enough sentiment in Russia adverse to their government's view to venture an expression in a newspaper, notwithstanding the very limited freedom accorded to the press in that country.

As to the touch of indignation which counsel throws into his comments on the protective aspect of the Russian scheme, with which our own tariff ideas should make us sympathize (as he thinks), it is always to be remembered that import duties or "surtaxes" are not the only feature of the Russian scheme. They may bear upon it as adventitious aids; but in the bounty aspect of that scheme, with which alone we are concerned, they are remote or even aloof from it. They merely come in to cooperate with the independent government fiat as to home price in sustaining that price.

HENRY M. HOYT,
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